

**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: June 6, 2002

Talon Lubricants, Inc.
RR 2, Box 78
Dingmans Ferry, PA 18328

Reg. No. 2154153
Cancellation No. 92040652

Michael E. Sellers
Luedeka Neely & Graham, PC
PO Box 1871
Knoxville, TN 37901

Thermofluid Technologies, Inc.

V.

Talon Lubricants, Inc.

TRADEMARK TRIAL AND
APPEAL BOARD
02 JUN 18 AM 8:33

Denise M. DelGizzi, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64.

A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

| | |
|--|-------------------|
| Discovery period to open: | June 26, 2002 |
| Discovery period to close: | December 23, 2002 |
| 30-day testimony period for party in position of plaintiff to close: | March 23, 2003 |
| 30-day testimony period for party in position of defendant to close: | May 22, 2003 |
| 15-day rebuttal testimony period for plaintiff to close: | July 06, 2003 |

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.



05-22-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #76

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|--------------------------------------|---|------------------------|
| In the Matter of United States |) | |
| Trademark Registration No. 2,154,153 |) | |
| |) | |
| THERMOFLUID TECHNOLOGIES, INC.,) | | |
| Petitioner |) | |
| |) | |
| v. |) | Cancellation No. _____ |
| |) | |
| TALON LUBRICANTS, INC., Registrant. |) | |

PETITION FOR CANCELLATION

Your Petitioner, Thermofluid Technologies, Inc. (hereinafter "Thermofluid"), believes that it is or will be damaged by continued registration of the mark RED TACK 2000 of United States Registration No. 2,154,153 issued April 28, 1998, and hereby petitions to cancel said registration on the following grounds.

1. The Petitioner, Thermofluid, is a corporation organized under the laws of the State of Tennessee, with a business address of 2413 East Broadway 141, Maryville, Tennessee, 37804.

2. Thermofluid or a predecessor in interest has since at least as early as May 31, 1990 continuously used in the United States and is now using in the United States the mark RED TEK for a variety of products including lubricating greases and lubricating oil for automotive, heavy truck, and industrial use.

3. Thermofluid or a predecessor in interest has established and now owns valuable goodwill in the mark RED TEK, and this mark has become so associated with the source of goods sold by or under license from Brewer that any mark including the terms "red tek", or

confusingly similar variations thereof, as applied to lubricating greases and oils marketed in commerce in the United States would be likely to confuse others as to the source of the goods or any services related thereto.

4. Thermofluid filed a United States trademark application on May 1, 2002 under Serial No. 76/402,033, wherein registration is sought in International Class 4 for the mark RED TEK for lubricating greases and lubricating oil for automotive, heavy truck, and industrial use. A copy of this application is attached hereto as Exhibit A.

5. On April 3, 1996, Talon Lubricants, Inc. filed an application under Serial No. 75/083,019 seeking registration of the mark RED TACK 2000 in International Class 4 for grease for motor vehicle lubrication and for general purpose use which application matured into U.S. Registration No. 2,154,153 on April 28, 1998. The particulars of said registration are attached hereto as Exhibit B.

6. On information and belief, registrant Talon Lubricants, Inc. was a corporation organized under the laws of the State of Delaware, with its principal place of business at RR 2, Box 78, Dingmans Ferry, Pennsylvania 18328.

7. On information and belief, registrant Talon Lubricants, Inc. is no longer an existing corporation as its corporate status was voided in 1999 by the Delaware Secretary of State for failure to pay taxes.

8. On information and belief, the mark RED TACK 2000 of United States Registration No. 2,154,153 is no longer in use and has been abandoned.

9. On information and belief, Thermofluid's right to use in the United States and to federally register the mark RED TEK for lubricating greases and lubricating oil for automotive, heavy truck, and industrial use is superior to that of Talon Lubricants, Inc. (or any purported predecessor in interest) by virtue of the prior continuous use thereof by Thermofluid or a predecessor in interest in commerce in the United States from a date long prior to any date from which Talon

Lubricants, Inc. or a predecessor in interest has made continuous use thereof in commerce or with the United States.

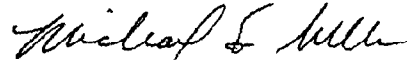
10. On information and belief, the mark RED TACK 2000, as shown in U.S. Registration No. 2,154,153, so resembles Thermofluid's mark RED TEK as to be likely, when applied to the goods identified in said Registration, to cause confusion, or to cause mistake or to deceive.

WHEREFORE, Thermofluid respectfully submits that it is or will be damaged by continued registration of the mark RED TACK 2000 of the said Registration No. 2,154,153, and requests that this Petition For Cancellation be sustained in its favor and that United States Registration No. 2,154,153 be canceled.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.

By:



Michael E. Sellers

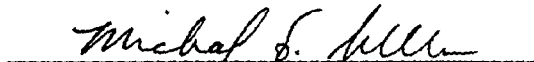
Registration No. 39,831

May 22, 2002
P.O. Box 1871
Knoxville, Tennessee 37901
865-546-4305

FIRST CLASS CERTIFICATE OF MAILING

I hereby certify that the foregoing Petition For Cancellation is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this date.

5-22-2002
Date



Michael E. Sellers
Registration No. 39,831

MES:cmw
Enclosures
/57408.pet2 cancel.wpd

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THERMOFLUID TECHNOLOGIES, INC.
a Tennessee Corporation

Petitioner,

vs.

TALON LUBRICANTS, INC.
a Delaware Corporation

Registrant-Respondent.

PETITION FOR CANCELLATION

Cancellation No.

Reg. No. 2,154,153

Date of Issue: April 28, 1998

BOX TTAB FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

Enclosed herewith is a Petition for Cancellation of Registration No. 2,154,153 trademark registered on the Principal Register, together with a duplicate thereof in accordance with 37 C.F.R. § 2.112(a). Also enclosed is a check in the amount of Three Hundred Dollars (\$300) in payment of the filing fee for this Petition.

Should the proper payment not be enclosed, if the check is improper or missing, please charge the unpaid amount or credit the overage to our Deposit Account No. 12-2355. Two photocopies of this request are also enclosed.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.

By:


Michael E. Sellers

Registration No. 39,831

May 22, 2002
P.O. Box 1871
Knoxville, TN 37901
(865) 546-4305

"Express Mail" Mailing Label No. EL 872 411 841 US

Date of Deposit: May 22, 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK APPLICATION PRINCIPAL REGISTER

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS:

Trademark: RED TEK
International Class: 001 and 004

Applicant:

Thermofluid Technologies, Inc.

A corporation of Tennessee

having a business address at:

2413 East Broadway 141
Maryville, TN 37804

The above-identified applicant has adopted and is using the trademark shown in the accompanying drawing for:

corrosion inhibitors for cooling systems; fuel additives for engines;
and refrigeration gases for use in refrigeration systems in
International Class 001
and
lubricating greases and lubricating oil for automotive, heavy truck,
and industrial use in International Class 004,

and requests that said mark be registered in the United States Patent Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051, et. seq., as amended.)

For International Class 001 - The trademark was first used anywhere at least as early as May 31, 1990, was first used in commerce at least as early as May 31, 1990, and such dates of first use are applicable to at least the fuel additives. First use of the mark was by a predecessor in title;

For International Class 004 - The mark was first used anywhere at least as early as May 31, 1990 and was first used in commerce at least as early as May 31, 1990. First use of the mark was by a predecessor in title.

The mark is used by applying the mark to packaging for the goods, and four specimens showing the mark as actually used are presented herewith.

Applicant humbly acknowledges that the circle "R" federal registration symbol should not appear in the specimens as the mark has not yet been granted registration status. Use of the circle "R" symbol was inadvertent, and steps have been taken to discontinue its use until the application has matured into a registration.

Applicant, by the undersigned, hereby appoints, Michael E. Sellers, Andrew S. Neely, Mark S. Graham, Robert O. Fox, David E. LaRose, Geoffrey D. Kressin, Richard W. Barnes, Jr., Jason L. Hornkohl, Mark P. Crockett, J. David Gonce, and Michael T. Lukon (all members of the Bar of the State of Tennessee), with full power of substitution and revocation, to prosecute this application, and to transact all business in the Patent and Trademark Office connected therewith and requests that all correspondence in respect to this application be directed to LUEDEKA, NEELY & GRAHAM, P.C. (Customer No. 000408), P.O. Box 1871, Knoxville, Tennessee 37901, Telephone (865) 546-4305.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the Applicant; he believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce, to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Thermofluid Technologies, Inc.

Date: 4/30/02

By: Gene Brewer
Gene Brewer, President

FA57408.app.wpd

DRAWING

APPLICANT: Thermofluid Technologies, Inc.

ADDRESS: 2413 East Broadway 141
Maryville, TN 37804

DATE OF FIRST USE: At least as early as May 31, 1990

DATE OF FIRST USE IN
INTERSTATE COMMERCE: At least as early as May 31, 1990

GOODS : corrosion inhibitors for cooling systems;
fuel additives for engines; and
refrigeration gases for use in refrigeration
systems in International Class 001
and
lubricating greases and lubricating oil for
automotive, heavy truck, and industrial use in
International Class 004

RED TEK

LUEDEKA, NEELY & GRAHAM, P.C.

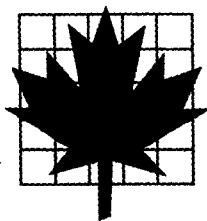
P.O. Box 1871

Knoxville, Tennessee 37901

Telephone: (865) 546-4305

Specimen

File No. 57408.M1



**RED
TEK®**

**SUPER
CONCENTRATED**

**Fuel
Enhancer™**

ANTI-GEL

For Diesel or Gasoline

Improves Horsepower and Performance

Treats up to 9,690 litres



DANGER

**HARMFUL OR FATAL IF SWALLOWED
EXTREMELY FLAMMABLE**



See precautions on reverse side

3.78 LITRES (128 FL. OZ)

Keep out of reach of children.

LUEDEKA, NEELY & GRAHAM, P.C.

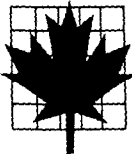
P.O. Box 1871

Knoxville, Tennessee 37901

Telephone: (865) 546-4305

Specimen

File No. 57408.M1



**RED
TEK®**

Cooling System Treatment

**Traitement du système de
refroidissement**

KompleteTM Kool

**Complete protection without flushing!
Protection complète sans vidange!**

- Stops Cavitation
- Prevents Corrosion
- 10 yr. Coolant Extender
- Arrête la cavitation
- Préviend la corrosion
- Prolonge la vie du liquide de refroidissement de 10 ans

Fleet Proven / Éprouvé pour les parcs

4 Litres

LUEDEKA, NEELY & GRAHAM, P.C.

P.O. Box 1871

Knoxville, Tennessee 37901

Telephone: (865) 546-4305

Specimen

File No. 57408.M1

DANGER: Contents under pressure, flammable gas. Can form explosive mixtures with air. Contact with liquid may cause frostbite.

PRECAUTIONS: Keep away from heat sparks and flames. Container temperature should not exceed 120° F. Do not drop. Store and use in well ventilated areas. Wear protective clothing and equipment during use. Avoid skin or eye contact.

FIRST AID: If inhaled, remove victim to fresh air. Administer artificial respiration if breathing has stopped. For eye contact with liquid, flush with lukewarm water for at least 15 minutes. For skin contact with liquid, flush with water while removing contaminated clothing; wash the exposed area with soap and water. If frostbitten, warm the affected area using lukewarm water until circulation returns. In all cases, obtain immediate medical care.

ALL LABELED HAZARD PRECAUTIONS MUST BE OBSERVED. SEE MATERIAL SAFETY DATA SHEET FOR THIS PRODUCT.

NOTE: If an air conditioning system charged with REDTEK 12a develops a leak, we recommend evacuating remaining REDTEK 12a Refrigerant before recharging.

Petroleum gases, liquefied 2.1 UN1075
DOT-E 12039 SEXTON® D.O.T. 2Q

WARNING! CONTENTS UNDER PRESSURE!



**RED
TEK 12a**

R E F R I G E R A N T

✓ Replaces R-12 substitutes and 134a

✓ No Retrofitting ✓ Runs colder

Equivalent to 18 oz. CFC R-12

Equivalent to 16 oz. HFC-134a

NET Weight 6 OZ. (168 G)

↓ **THIS END UP FOR CHARGING** ↓

The Environmental Alternative!

Non Ozone Depleting * Non Global Warming * Non Toxic
DIRECTIONS FOR USE

As per use with any flammable substance, take adequate precautions during use.

1. Shut off compressor
2. Do not mix with other refrigerants
3. Recover existing refrigerant into suitable container
4. Pull a system vacuum to 10 in.
5. Connect gauges and hoses with compressor off
6. To install product, invert can and install product liquid on low-pressure side
7. After minimum charge, test system for leaks. If no leak is detected, turn compressor on high, add additional product as needed. **DO NOT EXPOSE TO FLAME!**
8. REDTEK 12a Refrigerant is flammable with open flame and should be leak tested with REDTEK Dye Charge, an electronic alkane leak tester, or soap bubbles. If leak is detected, ventilate area, evacuate system, repair leak and install new product as per instructions above.
9. If pressure and temperatures are correct, shut off compressor, disconnect gauges; install service port caps and install system label in a clearly visible area.
10. For overcharged systems or leak in system, evacuate into a suitable container and restart charging procedure.

DO NOT OVERCHARGE! Exceeding 60 psig on low side may damage compressor. In some cases, clearing the sight glass overcharges the system. Overcharging may affect cooling ability.

TCB TECHNOLOGIES
Johnstown, Colorado 80308

#1-800-451-2011
Made in U.S.A.

EDEKA, NEELY & GRAHAM, P.C.

P.O. Box 1871

Knoxville, Tennessee 37901

Telephone: (865) 546-4305

Specimen

File No. 57408.M1





[Typed Drawing]

Mark

RED TACK 2000

Goods and Services

IC 004. US 001 006 015. G & S: grease for motor vehicle lubrication
and for general purpose use. FIRST USE: 19961223. FIRST USE IN
COMMERCE: 19961223

Mark Drawing Code

(1) TYPED DRAWING

Serial Number

75083019

Filing Date

April 3, 1996

Filed ITU

FILED AS ITU

Publication for Opposition Date

January 28, 1997

Registration Number

2154153

Registration Date

April 28, 1998

Owner Name and Address

(REGISTRANT) Talon Lubricants, Inc. CORPORATION DELAWARE RR 2, Box 78
Dingmans Ferry PENNSYLVANIA 18328

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "2000" APART FROM THE MARK
AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

MATTHEW H. MCCORMICK

TRAMII GENERAL QUERY AS OF: 06/18/02 11:06:04

SERIAL NUMBER: 75083019 FILING DATE: 04/03/1996
REG. NUMBER: 2154153 REG. DATE: 04/28/1998
REGISTER: PRINCIPAL MARK TYPE: TRADEMARK
FILED USE: NO CURRENTLY USE: YES AMENDED USE: NO
FILED ITU: YES CURRENTLY ITU: NO AMENDED ITU: NO
FILED 44D: NO CURRENTLY 44D: NO AMENDED 44D: NO
FILED 44E: NO CURRENTLY 44E: NO AMENDED 44E: NO

EXAMINER: 73356-CALDERON, ANNA EXMR LO: 105
LO ASSIGNED: 105
LOCATION: 849-TTAB
DATE IN LOC: 06/10/2002
CHRG TO LOC: NONE
CHRG TO: NONE
STATUS: 790 - CANCELLATION PENDING
STATUS DATE: 06/06/2002
A/R EXAMINER: NO A/R EXAMINER ASSIGNED

PUB DATE: 01/28/1997 DATE ABANDONED: DATE CANCELLED:
SECTION 8: NO SECTION 15: NO ASSIGNMENT: NO
RENEWAL FILED: NO RENEWAL DATE: DATE AMENDED REG:
CLASSES ACTIVE: 01

MARK: RED TACK 2000

CURRENT OWNER INFORMATION

PARTY TYPE: 30-ORIGINAL REGISTRANT - FIRST NAME
NAME: Talon Lubricants, Inc.
ADDRESS: RR 2, Box 78
DINGMANS FERRY PENNSYLVANIA 18328
ENTITY: 03-CORPORATION
CITIZENSHIP: DELAWARE

GOODS AND SERVICES

The following symbols indicate that the goods and services have been amended after registration of the Mark.

Double parenthesis ((.)) identify any "less goods";
Single brackets [...] indicate deleted goods; and,
Single asterisks *..* identify additional (new) wording in the goods.

FOR: grease for motor vehicle lubrication and for general purpose use
INT. CLASS 004 (U.S. CLASSES 001 006 AND 015)
70FIRST USE 12/23/1996 USE IN COMMERCE 12/23/1996 CLASS STATUS: 6

MISCELLANEOUS INFORMATION / STATEMENTS

SECTION 2F: NO SECTION 2F IN PART: NO
DISCLAIMER WITH PREDETERMINED TEXT:
"2000"

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM | PRCD NUM |
|----------|--------|----------|---|---------|----------|
| 06/06/02 | PETC | T | CANCELLATION INSTITUTED NO. 999999 | 014 | 040652 |
| 04/28/98 | R.PR | A | REGISTERED-PRINCIPAL REGISTER | 013 | 000000 |
| 02/10/98 | CNPR | P | ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED | 012 | 000000 |
| 02/04/98 | CNEA | S | EXAMINERS AMENDMENT MAILED | 011 | 000000 |

Serial Number: 75083019

| | | | | | |
|----------|------|---|---------------------------------------|-----|--------|
| 05/30/97 | DOCK | D | ASSIGNED TO EXAMINER | 010 | 073356 |
| 05/25/97 | SUPC | I | STATEMENT OF USE PROCESSING COMPLETE | 009 | 000000 |
| 05/08/97 | IUAF | S | USE AMENDMENT FILED | 008 | 000000 |
| 04/22/97 | NQAM | O | NOTICE OF ALLOWANCE-MAILED | 007 | 000000 |
| 01/28/97 | PUBO | A | PUBLISHED FOR OPPOSITION | 006 | 000000 |
| 12/27/96 | NPUB | O | NOTICE OF PUBLICATION | 005 | 000000 |
| 11/08/96 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 004 | 000000 |
| 11/06/96 | CNEA | F | EXAMINERS AMENDMENT MAILED | 003 | 000000 |
| 09/13/96 | CNRT | F | NON-FINAL ACTION MAILED | 002 | 000000 |
| 09/06/96 | DOCK | D | ASSIGNED TO EXAMINER | 001 | 073356 |

CORRESPONDENCE

ATTORNEY: MATTHEW H. McCORMICK
ATTORNEY DOCKET NUMBER: NONE
CORRESPONDENCE ADDRESS: TALON LUBRICANTS, INC.

OTHER INFORMATION

MARK DRAWING CD: 1-TYPESET WORD(S)/LETTER(S)/NUMBER(S)
SECTION 8 IN PART: NO
REPUBLIC SEC 12C: NO PUB DATE 12C:
CHANGE IN REGISTRATION: NO
TTAB DECISION: YES
LOST CASE: NO

PRIOR OWNER INFORMATION

PARTY TYPE: 20-OWNER AT PUBLICATION - FIRST NAME
NAME: Talon Lubricants, Inc.
ADDRESS: RR 2, Box 78
DINGMANS FERRY PENNSYLVANIA 18328
ENTITY: 03-CORPORATION
CITIZENSHIP: DELAWARE

PARTY TYPE: 10-ORIGINAL APPLICANT - FIRST NAME
NAME: Talon Lubricants, Inc.
ADDRESS: RR 2, Box 78
DINGMANS FERRY PENNSYLVANIA 18328
ENTITY: 03-CORPORATION
CITIZENSHIP: DELAWARE

**PALM INTRANET**Day : Tuesday
Date: 6/18/2002
Time: 11:05:27**Trademark Assignment Registration No. Information for
2154153****Total Assignments : 0**Serial Number : **75/083019**Registration Number : **2154153**Date Filed : **04/03/1996**Date Registered : **04/28/1998**

Related Registration Numbers:

Mark : **RED TACK 2000**Registrant(s) : **TALON LUBRICANTS, INC.**

Reel/Frame(s) :

Search Completed: No More Records to Display.

Search Another:Serial# or Registration# or Reel/Frame#

(To Go BACK Use BACK Button on Your BROWSER Tool Bar)

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